Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 24th February, 2005 (Phalguna 5, 1926)

SERIES II No. 48

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 23-7-2004 in reference No. IT/102/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 10th August, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/102/99

Shri Suresh M. Govenkar,
C/o Uttam A. Parab,
Behind Bus Stop,
Siolkar Vaddo,
Mulgao,
Assnora, Bardez-Goa. ... Workman/Party I

V/s

M/s. Sagun Extrusions Limited,
Thivim Industrial Estate,
Plot No. 2, Karaswada,
Mapusa-Goa. ... Employer/Party II

Workman/Party I - Represented by Shri Subhas Naik.

Employer/Party II - Represented by Adv. Shri S. K. Manjrekar.

Panaji, dated: 23-7-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 17th August, 1999 bearing No. IRM/CON/MAP/(71)/99/4038 referred the following dispute for adjudication of this Tribunal.

> Whether the action of the management of M/s. Sagun Extrusions Ltd., in terminating the services of their workman Shri Suresh M. Govenkar with effect from 8-2-1999, is legal and justified?
>
> If not, what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/102/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "workman") filed his statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that the Employer/Party II (for short, "employer") is having a factory situated at Tivim Industrial Estate, Karaswada, Bardez-Goa and it is engaged in the business of manufacturing of packaging materials of various types, lamination work, printing work, slitting work etc. That the workman was employed as a Slitting Operator with the employer since 1994 and his services were confirmed from 1st May, 1998 and on confirmation he was paid monthly salary of Rs. 1600/-. That the workers of the employer became the members of the union called Kamgarancho Ekvott and vide letter dated 8-5-98 the management was informed about the unionisation of the workers. That as soon as the employer came to know about the formation of the union by the workmen, the employer on 13-5-98 refused employment to Shri C. S. Dewedi, the President of local union committee. That said Shri Dewedi approached Kamgarancho Ekvott and the said union raised the dispute and the same was referred to this Tribunal for adjudication under reference No. IT/67/99. That the workman worked continously with the employer till 7-2-99 and on 8-2-99 when he reported for work as usual,

Ms. Sharmila D'Souza, the Manager of the employer told him not to come for duty from that they onwards and no reasons were assigned for the same nor notice of one month was given, nor one month's wages in lieu of wages was given nor retrenchment compensation was paid. That the employer did not follow the principle of "last come first go". The workman contended that termination of service by the employer is in violation of the principles of Sec. 25F, 25G and 25H of the Industrial Disputes Act, 1947. The workman contended that after termination of his services the employer has recruited new employees in his place. The workman contended that since termination of his service is illegal and unjustified he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that at no point of time the services of the workman were terminated. The employer stated that the union has no authority to represent the workman, as the workman is not the member of the said union. The employer stated that the workman was issued a transfer letter dated 27-1-99 transferring him to its associate concern namely Rolls Pack at Pune and he was required to report for work at Pune on 8-2-99. The employer stated that the workman did not report at the place of transfer and the letter of transfer which was given to him was refused by him to accept the same on 30th Jan., 1999. The employer denied that employment was refused to Shri Divedi or that he was a President of the local committee. The employer denied that on 13-5-98 Shri Diwedi reported for work or that the security did not allow him to report for work or that the security was instructed not to allow him to report for duty. The employer stated that Shri Dewedi was suspended pending enquiry as he had committed serious misconduct. The employer denied that the workman reported for work on 8-2-99 and stated that since he was transferred at Pune, the question of his reporting for work on 8-2-99 did not arise as also the question of paying notice pay and retrenchment compensation did not arise as it is a case of transfer and not termination of service. The employer denied that the provisions of Sec. 25F, 25G and 25H applied to the workman. The employer denied that new employees have been recruited in the place of the workman. The employer stated that the reference is not maintainable as the dispute involved his not of termination of service of the workman but it is case of transfer. The employer denied that the workman is entitled to any relief as claimed by him.

4. On the pleadings of the parties, following issues were framed at Exb. 7.

1. Whether the Party I proves that the Party II terminated his services from 8-2-99 in violation of the provisions of Sec. 25F, 25G and 25H of the Industrial Disputes Act, 1947 ?
2. Whether the Party I proves that the Union namely Kamgarancho Ekvott is authorised to represent him ?
3. Whether the Party I proves that the action of the Party II in terminating the services of the Party I with effect from 8-2-99 is illegal and unjustified ?
4. Whether the Party II proves that the reference is not maintainable and bad in law ?
5. Whether the Party II proves that the Party I was transferred to Pune vide transfer order dated 27-1-99 and he refused to report at the transferred place ?
6. Whether the Party I is entitled to any relief ?
7. What Award ?

5. My findings on the issues are as follows:

Issue No. 1: In the affirmative as regards the provision of Sec. 25F of the I. D. Act, 1947.
Issue No. 2: Does not arise.
Issue No. 3: In the affirmative.
Issue No. 4: In the negative.
Issue No. 5: In the negative
Issue No. 6: As per para 15 below.
Issue No. 7: As per order below.

REASONS

6. *Issue Nos. 1 and 5:* Both these issues are taken up together because they are interrelated. The contention of the workman is that he reported for work on 8-2-99 but the Manager of the employer namely Miss Sharmila D'Sousa told him not to come for duty from that day and he was not allowed to report for work. His contention is that no reasons were given for terminating his services, nor he was given one month's notice, nor notice pay, nor retrenchment compensation. His contention is that the employer did not follow the principles of "last come, first go" and that also after termination of his service new person was recruited in his place. The contention of the employer on the other hand is that, there is no termination of the service of the workman but he did not report for work at the place of his transfer, that is its associate concern namely Rolls Pack, at Pune from 8-2-99.

7. In the present case only the workman has led evidence by examining himself. The employer has not led any evidence though several opportunities were given. The workman in his evidence stated that he was employed with the employer as slitting operation from the year 1994 and that he was confirmed in service with effect from 1st May, 1998. He has produced the confirmation order dated 6th June, 1998 at Exb. W-1. He has stated that he worked with the employer till 7-2-99 and on 8-2-99 when he reported for duty he could not find his punching card and that when he met the Manager Miss Sharmila D'Souza he was told by her to go home because there was no work for him. He has stated that he was not told the reasons for terminating his services, nor he was given one month's notice, nor he was paid notice pay nor retrenchment compensation. He has stated that no seniority list was prepared by the employer nor the principle of "last come first go"

was followed. He has stated that he had written letter to the employer demanding reinstatement in service. He has produced the said letter at Exb. W-2 and the minutes of the conciliation proceedings wherein failure is recorded at Exb. W-3. In the cross examination of the workman the employer did not dispute that the workman was employed from the year 1994. The employer admitted the confirmation order dated 6-6-98 produced by the workman at Exb. W-1. The workman admitted that as per clause 4 of the confirmation order he was liable to be transferred at any time from one job to another, from one department to another, or from one post to another and also that he was liable to be transferred to any other firm or company owned by the employer by any of its associates in India. He stated that he is not aware if the employer has any of its associates in India. He stated that he is not aware if the employer was having one more company by name M/s. Rolls Pack at Pune. He stated that during the period 27-1-99 to 31-1-99 he did not receive any letter from the employer. He stated that his sister Anita Govekar was residing at Lamgao Bicholim and that she was not residing with him. He stated that in the month of January, 1999 he was residing at Siolkar Wada, Mulgao, and that he had furnished his said address to the employer. He denied that he had furnished his residential address to the employer as Lamgao, Bicholim. He denied that he had received any letter dated 27-1-99 addressed to him by the employer. He denied the suggestion that he was given the letter dated 27-1-99 between the period 27-1-99 to 31-1-99 and that since he refused to accept the same it was sent at his Bicholim residential address.

8. The above evidence supports the contention of the workman that he was working with the employer as slitting operation since the year 1994 and that he was confirmed in service w.e.f, 1st May, 1998. The employer had taken a specific defence that the services of the workman were not terminated by refusal of employment to him but he was transferred at Pune in its sister concern where he failed to report for duty from 8-2-99. The employer has totally failed to prove this fact in the evidence of the workman. The workman has denied that he had received any letter dated 27-1-99 from the employer transferring him at Pune. He has also denied that he was offered any such letter and that he refused to accept the same. As mentioned earlier the employer has not led any evidence in the matter. Therefore there is absolutely no evidence to prove that the workman was transferred at the sister concern of the employer namely M/s. Rolls Pack at Pune and that he failed to report there from 8-2-99. In the absence of any evidence from the employer that the workman was transferred at its sister concern M/s. Rolls Pack at Pune and he failed to report there on 8-2-99 the contention of the workman that his services were terminated by the employer by refusing employment to him w.e.f. 8-2-99 is liable to be believed and accepted. The Bombay High Court in the case of Gangaram Medekar v/s Zenith Safe Mfg. Co., reported in 1996 I CLR 172 has held that if it is case of word against word, then the benefit should go to the workman and not to the employer. I therefore hold that the workman has succeeded in proving that the employer terminated his services w.e.f. 8-2-99.

9. Now it is to be seen whether there is violation of Sec. 25F of the Industrial Disputes Act, 1947 in terminating the services of the workman. Sec. 25F comes into play only if the termination of service amounts to retrenchment. Therefore it is to be seen whether the termination of service of the workman by the employer amounts to retrenchment. "Retrenchment" is defined in Sec. 2(oo) of the Industrial Disputes Act, 1947. As per the said section retrenchment means termination of service of a workman otherwise than as a punishment inflicted by way of disciplinary action. The exception laid down under section 2(00) of the Act, are (a) voluntary retirement of the workman or (b) retrenchment of the workman at reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or (bb) termination of service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein or (c) termination of service of a workman on the ground of continued ill-health. In the present case the termination of service of the workman was not as a matter of punishment inflicted by way of disciplinary action. The workman's case also does not fall within the exceptions laid down under Sec. 2(oo) of the Industrial Disputes Act, 1947. The Supreme Court in the case of Santosh Gupta v/s State Bank of Patiala reported in 1980 II LLJ 72 has held that every type of termination of service of a workman except of the types specifically excepted amounts to retrenchment. Therefore in my view the termination of services of the workman amounts to retrenchment as defined under Sec. 2(oo) of the Industrial Disputes Act, 1947.

10. Sec. 25F of the Industrial Disputes Act, 1947 lays down the procedure to be followed by the employer for retrenching the services of a workman. As per the said provisions the services of the workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wages for each completed year of continuous service or any part thereof in excess of six months. The above conditions are conditions precedent to retrenchment. Sec. 25B(2) of the Industrial Disputes Act, 1947 defines continuous service. As per the said provision a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of a workman employed below ground in a mine and 240 days in any other case. In the present case admittedly the workman was not employed below ground in a mine. The workman had stated in his claim

statement that he was employed from May, 1994 and he was confirmed from 1st May, 1998. The employer in the written statement did not deny this statement of the workman. The employer in the evidence of the workman also did not deny the statement of the workman that he was employed from the year 1994 and he was confirmed from 1st May, 1998. The services of the workman were terminated from 8-2-99. There is no evidence to show that the workman was given break in service at any time. It is therefore established that the workman worked with the employer for more than 240 days prior to the date of termination of his service. Therefore the provisions of Sec. 25F of the Industrial Disputes Act, 1947 applied to the workman. The workman in his evidence has stated that he was not given one months notice, nor he was paid notice pay in lieu of notice nor he was paid retrenchment compensation. There is no denial to this statement of the workman from the employer nor there is any evidence to the contrary. I, therefore hold that there is no compliance of Sec. 25F of the Industrial Disputes Act, 1947 from the employer. The workman has contended that the termination of his service is also in violation of the provisions of Sec. 25G and 25H of the Industrial Disputes Act, 1947. It is the contention of the workman that the employer did not follow the principles of "first come, last go" while terminating his services and also that new persons were recruited in his place. However no evidence has been produced by the workman in support of his above contentions. There is no evidence from the workman to show that besides him there were other workmen who were working as slitting operators Grade II in which post he was confirmed. Also there is no evidence from him to prove that after termination of his service the employer employed new persons in his place. I, therefore hold that the workman has failed to prove that the termination of his service is in violation of the provisions of Sec. 25F and 25H of the Industrial Disputes Act, 1947. In the circumstances, I hold that the workman has succeeded in proving that the employer terminated his services with effect from 8-2-99 in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947 but he has failed to prove that there is violation of the provisions of Sec. 25G and 25H of the Industrial Disputes Act, 1947. I, therefore answer the issue no. 1 accordingly. I, further hold that the employer has failed to prove that the workman was transferred to Pune vide order dated 27-1-99 and that he refused to report at the transferred place. I, therefor answer the issue no. 5 in the negative.

11. *Issue No. 2:* In fact according to me this issue does not arise. This is because there is nothing on record to indicate that the workman was represented by the Union Kamgarancho Ekvott in the present case. The order of reference shows that the dispute was raised by the workman himself. The statement of claim has been filed by the workman himself and not by the Union Kamgarancho Ekvott. The dispute referred for adjudication is an individual dispute. I, therefore hold that the issue whether the Union Kamgarancho Ekvott is authorised to represent the workman in the present case or does not arise and hence I answer the issue no. 2 accordingly.

12. *Issue No. 4:* Adv. Shri S. K. Manjrekar, representing the employer submitted that the reference is not maintainable because it is a case of transfer and not termination or refusal of employment. He further submitted that the workman has failed to prove that the Union Kamgarancho Ekvott had the authority to raise the dispute and represent him in the present case. While deciding the issue nos. 1 and 5, it has been held by me that the employer has failed to prove that the workman was transferred to Pune vide order dated 27-1-99 and that he refused to report at the transferred place. It has been further held by me that the workman has succeeded in proving that his services were terminated with effect from 8-2-99 in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947. The Government makes the reference of the dispute based on the allegations made by the workman and it is the duty of the Tribunal to construe the reference and bring out the real dispute for its decision. I am supported in my view by the judgment of the Bombay High Court in the case of Sheshrao Bhaduji Hatwar v/s The Presiding Officer, First Labour Court & Ors., reported in 1990 II CLR 726. In this case the High Court has held that the mere wording of the reference is not decisive in the matter of tenability of a reference, and that it may contain the defence or not. The High Court has further held that if points of difference are discernable from the material before the Court or Tribunal, it has only one duty and that is to decide the points on merits and not to be astute to discover normal defects in wording of the reference. Therefore there is no substance in the contention of the employer that the reference is not maintainable because it is a case of transfer and not termination of service in respect of which the dispute is referred by the Government.

13. The other contention which has been raised by the employer is that the workman has failed to prove that the Union Kamgarancho Ekvott had the authority to raise his dispute and represent him in the present case. There is no substance in this contention also of the employer. There is no evidence on record to show that the dispute of the workman was raised by the union Kamgarancho Ekvott on behalf of the workman. The document produced by the workman namely the letter dated 9-2-99 Exb. W-2 shows that the dispute was raised by the workman against the employer regarding his termination of service and not by the union Kamgarancho Ekvott. Also, in the present case there is nothing on record to show that the workman was represented by the union Kamgarancho Ekvott. The statement of claim filed by the workman has been signed by him and not by the union representative. Therefore the question of proving the authority of the union Kamgarancho Ekvott to raise the dispute on behalf of the workman or its authority, to represent the workman in the present case did not arise. I, therefore hold that the employer has failed to prove that the reference is not maintainable and is bad in law. Hence, I answer the issue No. 4 in the negative.

14. *Issue No. 3:* It is the contention of the workman that termination of his service by the employer with effect from 8-2-1999 is illegal and unjustified. While deciding the issue No. 1 it has been held by me that the workman has succeeded in proving that his services were terminated by the employer w.e.f 8-2-1999 and that the employer has failed to comply with the provisions of Sec. 25F of the Industrial Disputes Act, 1947. Thus the termination of service of the workman is in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947. The Supreme Court in the case of M/s. Avon Service Production Agency Pvt. Ltd., v/s Industrial Tribunal, Hariyana and others reported in AIR 1970 SC 170 has held that giving notice and payment of compensation is a condition precedent for valid retrenchment and failure to comply with the same renders the order of termination invalid and in-operative. Same principles are laid down by the Supreme Court in the case of Gammon India Ltd., V/s Niranjan Das reported in (1984) I SCC 509. In this case the Supreme Court has held that in the absence of compliance with the requisite of Sec. 25F, the retrenchment bringing about the termination would be void-ab-initio. Since in the present case the services of the workman were terminated in violation of the provisions of Sec. 25F of the Industrial Disputes Act, 1947, in view of the law laid down by the Supreme Court in the case of M/s. Avon Service Production Agency Pvt. Ltd., (Supra) and Gammon India Ltd. (Supra) the termination of service of the workman by the employer becomes illegal and unjustified. I therefore hold that the workman has succeeded in proving that termination of his service by the employer w.e.f. 8-2-1999 is illegal and unjustified. I therefore answer the issue No. 3 in the affirmative.

15. *Issue No. 6:* This issue pertains to the relief to be granted to the workman. The Bombay High Court in the case of Sayyed Anwar v/s Divisional Controller, MSRTC, Aurangabad and others reported in 2000 (2) Bom. L.C. 388 has held that it is well settled that if an order of dismissal or termination or retrenchment is set aside as illegal, improper, the normal relief of reinstatement with full back wages must follow unless the employer pleads and proves and brings on record cogent material to enable the labour court to depart from the aforesaid normal rule. Therefore the ordinary or the normal rule is that when the termination of service of the workman is held to be illegal and unjustified, he is entitled to reinstatement in service with full back wages and continuity of service unless there are reasons which do not warranty reinstatement or full back wages, and these reasons should be just and reasonable. In the present case the workman in his cross examination admitted that the factory of the employer at Karaswada, Mapusa, where he was working, is presently closed. Thus the closure of the factory has been admitted. The above admission was made by the workman in his cross examination which was recorded on 24th September, 2002. The employer has not led any evidence to show from which date the factory is closed. In the absence of any evidence from the employer and in view of the statement made by the workman that presently the factory is closed and this statement is made by the workman in September, 2002, it would be proper to hold that the factory of the employer is closed from September, 2002. Since the factory is closed the question of granting reinstatement does not arise. However, the workman shall be entitled to full back wages from the date of termination of his service, that is, from 8-2-1999 till August, 2002. Besides the said full back wages the workman shall be also entitled to closure compensation as it has been held by me that the factory of the employer is closed from September, 2002. In the present case there is no evidence to show that the provisions of chapter VB of the Industrial Disputes Act, 1947 applied to the employer and therefore what applied is the provision of Sec. 25FFF of the said Act. As per the said section a workman who has been in continuous service of not less than one year before the date of closure is entitled to notice and compensation in accordance with the provisions of Sec. 25F of the Act as if the workman has been retrenched. In the present case the workman was employed from May, 1994 and his services were terminated from 8-2-99. The termination of service of the workman has been held by me as illegal and unjustified. Therefore the workman was in continuous service and hence he is entitled to compensation as provided under Sec. 25F of the Industrial Disputes Act, 1947. In the circumstances, I hold that the workman is entitled to full back wages with all consequential benefits from the date of termination of his service, that is, from 8-2-99 till August, 2002 and the closure compensation as provided under Sec. 25F of the Industrial Disputes Act, 1947.

Hence, I pass the following order.

ORDER

It is hereby held that the action of the employer M/s. Sagun Extrusions Ltd., Caraswada, Mapusa, Goa, in terminating the services of the workman Shri Suresh M. Govenkar with effect from 8-2-1999 is not legal and justified. M/s. Sagun Extrusions Ltd., shall pay to Shri Suresh M. Govenkar full back wages with all consequential benefits from 8-2-1999 till August 2002 and the closure compensation as provided under Sec. 25F of the Industrial Disputes Act, 1947.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 14-7-2004 in reference No. IT/76/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 10th August, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/76/99

Shri Bikhu Dessai,
Rep. by The President,
Goa MRF Employees Union,
Saidham, Dhavalimol,
Ponda-Goa. ... Workman/Party I

V/s

M/s. M. R. F. Ltd.,
P. O. Box No. 1,
Ponda-Goa. ... Employer/Party II

Party I/Workman - Represented by Adv. Shri M. Conception.

Party II/Employer - Represented by Shri S. Chodnekar.

Panaji, dated: 14-7-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 30th June, 1999 bearing No. IRM/CON/P/(189)/97/3227 referred the following dispute for adjudication by this Tribunal

"(1) Whether the action of the management of M/s. MRF Limited., Ponda-Goa, in demoting their workman Mr. Bhiku Dessai, from his original Grade IV to Grade III, with effect from 5-2-1997, is legal and justified?

(2) If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/76/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "Union") file his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the Union are that it is a trade union registered under the Trade Union's Act, 1926 and it represent practically all the workmen of the Employer/Party II (for short, "Employer") in its establishment at Ponda, Goa. That since the formation of the union the employer has been attempting to disrupt the unity of the workmen who are employed by the employer and who are the members of the union. That the harassment interalia includes illegal changes in the service conditions, unjustified and unwarranted suspension, issuing of charge sheets on false and fabricated charges, refusal to negotiate in good faith and imposition of unfair labour practice in the guise of following the management policy. That a charge sheet dated 31-8-96 was issued to the workman Biku Dessai (for short, 'Workman') and he was suspended pending enquiry. That it was alleged in the charge sheet that on 30th August, 1996 the workman refused to hand over the maintenance request form to the Mechanical Department on the purport that there existed an alleged normal practice. That an enquiry was conducted into the said charge sheet and it was commenced from 19-11-96 and concluded on 27-1-97 on the ground that the workman failed to produce his witnesses though he knew the date of the enquiry. That no show cause notice was issued to the workman after the completion of the enquiry nor the workman was asked to submit his explanation to the punishment of demotion. That the enquiry which was conducted against the workman was a joint enquiry alongwith another workman namely Mr. Adam Makandar who was also charge sheeted for the same alleged misconduct and he was ultimately imposed punishment of 2 days suspension. That on 5-3-97 the workman was served with order of demotion. The union contended that the enquiry conducted against the workman was not fair, proper and impartial. The union contended that the charges of misconduct levelled against the workman are not supported by any evidence and the findings of the Inquiry Officer holding the workman guilty of the charges are perverse. The union contended that the demotion of the workman by the employer is illegal, unjustified and by way of victimization and unfair labour practice. The Union contended that the order dated 5-2-97 passed by the employer demoting the workman from his original grade IV to grade III w.e.f., 5-2-97 is illegal and unjustified and therefore the same is liable to be set aside.

3. The employer filed written statement at Exb. 4. The employer denied that Goa MRF Employees Union is a registered trade union under Trade Union's Act, 1926 and that practically all their workmen are the members of the said union. The employer denied that they have been attempting to disrupt the unity of the workmen because they are the members of the said union and that there has been large scale harassment and victimization of the workers or the union office bearers due to their legitimate trade union activities. The employer denied that there are any illegal changes in the service conditions or unjustified/unwarranted, suspension charge sheets are issued to the workman on false and fabricated charges or that there is refusal to negotiate in good faith. The employer admitted that the workman was issued a charge sheet dated 31-8-96 for resorting to willful insubordination and failing to perform his normal duties which amounted to a serious misconduct in accordance with the Certified Standing Orders of the employer. The employer stated that the workman participated in the enquiry and he was given reasonable opportunity to present his defence. The employer stated that the workman failed to produce his witnesses on the concluding day of the enquiry and the Inquiry Officer rightly observed during the course of the proceedings that the workman was deliberately delaying the enquiry proceedings. The employer stated that the Inquiry Officer submitted his findings holding the workman guilty of the charges and having concurred with the said findings the employer decided to impose

a lighter punishment of demotion in service. The employer stated that the enquiry was conducted against the workman and the other workman by name Mr. Adam Mukandan who was also charge sheeted for the same misconduct and he was also held guilty in the said enquiry but he was imposed punishment of 2 days suspension from work. The employer denied that the enquiry conducted against the workman is not fair, proper and impartial or that it was held in violation of the principles of natural justice. The employer denied that the findings given by the Inquiry Officer holding the workman guilty of the charges are perverse. The employer denied that the punishment of demotion imposed upon the workman is highly disproportionate to the charges or that the demotion of service of the workman amounts to unfair labour practice. The employer denied that the order dated 5-2-97 demoting the workman from his original grade IV to grade III w.e.f. 5-2-97 is illegal and unjustified. The employer denied that the workman is entitled to any relief as claimed by him. The workman thereafter filed rejoinder at Exb/5.

4. On the pleadings of the parties, issues were framed at Exb. 6 and thereafter the case was fixed for the evidence of the workman. When the case was fixed on 6-7-04 for recording the evidence of the workman, the workman appeared along with his Adv. M. Conception and Shri S. Chodnekar appeared on behalf of the employer. They submitted that the dispute between the parties is amicably settled. The employer filed an application dated 6th July, 2004 mentioning therein that the workman approached the employer with a desire to settle the matter and requested to extend to him the benefits of the settlement dated 14-4-2001 and that the employer considered the said request and extended that benefits of the said settlement to the workman and he has been paid all his dues arising out of the said settlement. The employer prayed that in the above circumstances the above matter be treated as closed. The workman gave no objection to the said application filed by the employer. Simultaneously the workman also filed an application dated 6-7-04 at Exb. 10. In the said application the workman admitted that he had approached the employer with a request to extend the benefit of the settlement dated 14-4-2001 to him and that the employer considered his request and extended all the benefits arising out of the said settlement and he has been paid in accordance with the terms of the said settlement. The workman stated that the he has no further claims against the employer as the matter has been finally settled between him and the employer. The workman prayed that the present mater be treated as closed as the same is settled finally and all his dues have been paid.

5. The dispute was raised at the instance of the workman. The workman as well as the employer have filed applications submitting that the dispute between them is amicably settled and that the workman has been paid the benefits of the settlement dated 14-4-2001 by way of settlement of the present dispute. The parties have submitted that in view of the settlement arrived at between them the above matter be treated as closed. In view of the admissions made by the parties that the matter is settled, the dispute does not exist and the reference does not survive. In the circumstances, I pass the following order.

ORDER

It is hereby held that the dispute between the workman Shri Bikhu Dessai and M/s M.R.F. Ltd., does not exist in view of the settlement arrived at between them and consequently the reference does not survive.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 30-7-2004 in reference No. IT/58/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, September, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/58/2002

Shri Kampanan Naik,
Rep. by The Secretary,
Goa Trade & Commercial Workers' Union,
Velho's Building, 2nd Floor,
Panaji-Goa. ... Workman/Party I

V/s

M/s. Atlantic Sprinning & Weaving Mills Ltd.,
Xeldem,
Quepem-Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II - Represented by Shri P. Chaudikar.

Panaji, dated: 30-7-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12-8-2002 bearing No. 28/33/2002--LAB referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Atlantic Spinning & Weaving Mills Ltd., Xeldem, in terminating the services of Shri Kampanan Naik, Sider, with effect from 18-6-2001, is legal and justified?

If not, what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/58/2002 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "Union") filed his statement of claim at Exb. 3. The facts of the case in brief as pleaded by the union are that the workman was employed with the Employer-Party II (for short, "Employer") as a sider and he was the permanent employee. That the workman met with an accident on 28-4-2001 while and during the course of his employment and sustained serious injuries to his right eye and was under treatment of ESI dispensary, Margao, from 28-4-2001 to 8-6-2001. That after the treatment the workman was fit for resuming work on 9-6-2001 and accordingly he reported for work with fitness certificate on 9-6-2001. That however, the Manager Shri V. Patil told him to come on 15-6-2001 but no written instructions were given and the fitness certificate issued by ESI dispensary was returned by the said Manager. That on 15-6-2001 the workman reported for work but the Manager did not allow to resume duties and again asked him to come on 18-6-2001 and when he reported for work on the said date, he was told that his services are not required any further and he was given some money stating that it was his pending salary for the month of April, 2001. The union stated that refusal of employment to the workman by the Manager from 18-6-2001 is illegal and unjustified. The union stated that the dispute was raised regarding termination of the service of the workman by sending a letter to the employer but the same was returned "refusal to accept". The union stated that conciliation proceedings were held by the Dy. Labour Commissioner, but the conciliation, ended in failure. The union contended that termination of the services of the workman by refusal of employment to him is arbitrary and he was not paid any notice pay, or retrenchment compensation and therefore his termination of service is illegal and unjustified. The union claimed that the workman is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 5. The employer stated that Goa Trade & Commercial Workers' Union does not represent the workman and hence has no authority to file claim statement on behalf of the workman. The employer denied that the workman met with an accident on 28-4-2001 during the course of his employment or that he sustained serious injuries to his right eye or that he was under the treatment of ESI Dispensary, Margao, from 28-4-2001 to 8-6-2001. The employer denied that the workman reported for work on 9-6-2001 with fitness certificate. The employer denied that the Manager Mr. V. Patil told the workman to come on 15-6-2001 and that he returned the fitness certificate given to him by the workman. The employer denied that the workman reported for work on 15-6-2001 and that he was not allowed to resume duty and was asked to come back on 18-6-2001. The employer denied that on 18-6-2001 the workman reported for work or that the Manager told him that his services were not required or that he was handed over some money towards salary of April, 2001. The employer stated that the workman did not report for work from 29-4-2001 as he had secured alternate employment and he continuned to be gainfully employed. The employer denied that the services of the workman were terminated by the employer. The employer stated that during the conciliation proceedings held on 7-6-2001 the management representative had stated that the employer had not refused employment to the workman and that they are prepared to take him back in services and the workman can report for work immediately but they were not ready to pay back wages. The employer stated that the workman insisted on payment of back wages and stated that he will report for duty only in the event the management is ready to pay his back wages. The employer stated that since there is no refusal of employment to the workman the question of reinstating him in service or paying to him full back wages did not arise. The employer denied that the workman is entitled to any relief and stated that the reference is liable to be rejected. The workman thereafter filed rejoinder at Exb. 6.

4. Before the issues were framed the union as well as employer filed an application in the form a settlement that both the parties have agreed that the workman shall resume for work w.e.f. 1-4-2003 on the same terms and conditions which were existing prior to his alleged refusal of employment and shall be entitled to Rs. 56/- per day as wages. The workman stated that he is ready and willing to work on the above terms and conditions. Order was passed on the said application dated 24-3-2003 to the effect that the workman shall report for duty on 1-4-2003 in the 1st shift and the parties shall file report on 7-4-2003. Subsequently the union as well as the employer filed an application dated 9-5-2003 stating that the workman reported for duties and the employer has allowed him to resume his normal duties on 2nd April, 2003. Thereafter issues were framed at Exb. 9 and the case was fixed for recording the evidence of the workman. On 8-6-2004 Adv. Shri Suhas Naik, representing the union filed an application dated 8-6-2004 at Exb. 12 stating that the workman has been taken back in employment by the employer w.e.f. 1-4-2003 on the same terms and conditions which were existing prior to his termination of service. It was further stated that since the workman has been already provided employment

the dispute in respect of the termination of service of the workman does not survive and hence no dispute award may be passed. The employer gave no objection to the said application filed by the union. Since according to the union the workman has been taken back in employment by the employer on the same terms and conditions which were existing prior to his termination of service and as such the dispute does not exist, the reference does not survive.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference made by the Government does not survive as the dispute does not exist.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 12-8-2004 in reference No. IT/77/2000 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, September, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/77/2000

Shri Madhukar Padwalkar,
Insulation Fitter, Rep. by
Goa Trade & Commercial Workers' Union,
Panaji-Goa. ... Workman/Party I

V/s

M/s. Newkem Engineers Pvt. Ltd.,
C/o Zuari Agro Chemicals Ltd.,
Zuarinagar, Sancoale-Goa. ... Employer/Party II(1)

M/s S. Nicholas,
Zuarinagar, Goa. ... Employer/Party II(2)

Workman/Party I - Represented by Adv. Shri Suhas Naik.

Employer/Party II (1) - Represented by Adv. Shri P. J. Kamat.

Employer/Party II (2) - Represented by Adv. Shri P. Chaudikar.

Panaji, dated: 12-8-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 9th October, 2000 bearing No. IRM/CON/VSC/(6)/2000/4979 referred the following dispute as regards the termination of service of the Workman/Party I Shri Madhukar Padwalkar, by the Employer/Party II M/s. Newkem Engineers Pvt. Ltd., w.e.f. 4-7-1996 for adjudication of this Tribunal. Subsequently by order 4-1-2002 bearing No. 28/28/2001-LAB amended the schedule of reference and by way of said amendment M/s Nicholas C/o Zuari Industries Limited, Zuarinagar Sancoale, Goa, the successor in interest was added as a party to the reference. In view of the said amendment the dispute which came to be referred to this Tribunal for adjudication is as follows:

> "(a) Whether the action of the management of M/s. Newkem Engineers Pvt. Ltd., Zuarinagar, Sancoale-Goa and M/s. S. Nicholas c/o Zuari Industries Limited, Zuarinagar, Sancoale Goa, the successor in interest, in terminating the services of Shri Madhukar Padwalkar, Insulation Fitter, with effect from 4-7-96, is legal and justified?
>
> (b) If not, to what relief the workman is entitled ?"

2. On receipt of the reference registered A/D notice was issued to the parties and the parties put in their appearance. The Workman/Party I (for short, "workman") filed his statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was employed with M/s. Newkem Engineers Pvt. Ltd., in the year 1985 as Insulation Fitter on monthly salary of Rs. 2070/-. M/s. Newkem Engineers Pvt. Ltd., is the contractor who had undertaken the work of Plumbing and Scaffolding at Zuari Industries Ltd., Zuarinagar, Sancoale, Goa, and he continued to work with M/s. Newkem Engineers Pvt. Ltd., till 4-7-1996. That by an agreement with the Union the Management of M/s. Newkem Engineers Pvt. Ltd., was taken over by M/s. S. Nicholas who agreed to employ the workman on the same terms and conditions with continuity of service. That presently M/s. S. Nicholas is carrying on with the said contract of Plumbing and Scafolding at Zuari Industries Ltd. That the workman was issued a letter dated 24-5-96 wherein certain allegations were levelled against him and it was stated that he had committed serious acts of misconduct and as such the management decided to conduct the enquiry. That accordingly enquiry was conducted which was in gross violation of the principles of natural justice. That the

findings given by the Inquiry Officer are perverse and without application of mind. That the services of the workman were thereafter terminated w.e.f. 4-7-76. The workman claimed that he is entitled to reinstatement in service with M/s. S. Nicholas.

3. The employer/Party II M/s. Newkem Engineers Pvt. Ltd., filed written statement at Exb. 6. The said company admitted that it had undertaken a contract of Insulation and Scaffolding at Zuari Industries Ltd., and that the workman was one of the workers employed by them as an Insulation Fitter. The said company stated that on 12-5-96 at about 13 hours when the workman was going out from the factory of Zuari Industries Ltd., he was apprehended by the Security Inspector Shri A.J.D. Almeida and after his personal search aluminum strips weighing about 5 to 6 kgs were found hidden in his pants. The company stated that the said strips belonged to Zuari Industries Ltd., for whom the company was rendering Insulation and scaffolding services. The said company stated that the workman was charge sheeted by letter dated 24-5-96 and he was suspended from service pending enquiry but subsequently at the request of the union the suspension was revoked and the workman was allowed to report for work. The company stated that the enquiry was conducted against the workman in respect of the said charge sheet and he was given full opportunity to defend himself in the enquiry. The company stated that the Inquiry Officer submitted his findings on.13-6-96 holding the workman guilty of the charges levelled against him and thereafter a show cause notice dated 4-7-96 was issued to him. The company stated that after considering his reply to the show cause notice and after giving him personal hearing the company decided to dismiss the workman from service on account of gravity of misconduct and accordingly he was dismissed from service by letter dated 11-3-97. The company stated that there is no refusal of employment to the workman. The company denied that the enquiry was conducted against the workman in violation of the principles of natural justice or that the findings of the Inquiry Officer are perverse. The company denied that the workman is entitled to any relief.

4. The employer/Party II M/s. S. Nicholas filed written statement at Exb. 7. The said company stated that the reference made by the Government is not maintainable because the dispute of termination of service was not raised on M/s. Newkem Engineers Pvt. Ltd., by the workman and the dispute which was raised regarding refusal of employment to him with effect from 4-7-96. The said company stated that the services of the workman were terminated by M/s. Newkem Engineers Pvt. Ltd., by letter dated 11-3-97 after holding domestic enquiry and as he was very much in employment of said M/s. Newkem Engineers Pvt. Ltd., up to 10th March, 1997. The said company stated that on 12th May, 1996 at about 13 hours the Security Inspector Shri Almeida stopped the workman while he was going out of the factory through the DAP gate and he was searched and at that time the Security Inspector found aluminium strips/sheets weighing about 5 to 6 kgs hidden in his pants and that the said strips belonged to M/s. Zuari Industries Ltd. The said company stated that a charge sheet dated 24-5-96 was issued to the workman and pending enquiry he was suspended but subsequently the suspension was invoked. The said company stated that enquiry was conducted against the workman in respect of the said charge sheet and he was given full opportunity to defend himself in the enquiry. The said company stated that the Inquiry Officer submitted his findings holding the workman guilty of the charges levelled against him. The said company stated that the workman was dismissed from service by letter dated 11-3-97 and as such there is no refusal of employment to the workman from 4-7-96. The said company denied that it is the successor in interest of M/s. Newkem Engineers Pvt. Ltd., The said company denied that the termination of service of the workman is illegal and unjustified and prayed that the reference may be rejected. Thereafter the workman filed rejoinder at Exb. 8.

5. Issues were not framed in the present case as the parties submitted that they are trying for an amicable settlement. Several opportunities were given to the parties to settle the dispute but no settlement was arrived at. On 21-6-2004 the workman filed an application dated 21-6-2004 at Exb. 9. In the said application the workman stated that he raised the dispute on 2-4-97 before the Labour Commissioner regarding refusal of employment to him by the employer M/s. Newkem Industries Pvt. Ltd., from 4-7-96. He stated that after refusal of employment from 4-7-96 his services were terminated w.e.f. 11-3-97 and as such the dispute regarding termination is required to be raised before the proper forum. He stated that inadvertently he raised the dispute by letter dated 2-4-96 regarding refusal of employment to him. The workman stated that he does not wish to pursue the present reference and prayed that the same may be disposed of and leave be granted to him to raise fresh dispute in respect of illegal termination of his service. The Employer/Party II filed reply at Exb. 10. The said companies stated that according to the workman he had raised the dispute regarding refusal of employment to him from 4-7-96 and that his services were terminated from 11-3-97. They stated that since the termination is from 11-3-97 the present reference does not survive and an award can be passed to that effect.

6. Since according to the workman he had raised the dispute regarding refusal of employment to him by letter dated 2-4-96 and not about termination of his service from 4-7-96, the Government ought to have referred the dispute regarding refusal of employment to the workman from 4-7-96 and not regarding termination of his service from 4-7-96. The workman has stated that his services were terminated from 11-3-97 and that he wants to raise the dispute regarding termination of his service before the proper forum. Therefore, according to the workman himself the Government referred different dispute for adjudication than the one raised by him. This being the

case the dispute raised by the government is not maintainable and hence the same is liable to be rejected. The workman have sought leave of this Tribunal to raise fresh dispute regarding termination of his service w.e.f., 11-3-97. However, no such leave can be granted in these proceedings. Since according to the workman his services are terminated from 11-3-97 it is up to him to raise the dispute in that respect and the employer is free to raise such defence as they wish.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference made by the Government is not maintainable and hence the same is rejected.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 17-8-2004 in reference No. IT/48/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 2nd September, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/48/99

Workmen rep. by,
The President,
Crompton Greaves Employees Union,
C/o. Mr. Vinoo Sawant,
716, Betim,
Bardez-Goa. ... Workmen/Party I

V/s

Dy. General Manager,
M/s. Crompton Greaves Ltd.,
Tivim Industrial Estate,
Karaswada, Bardez-Goa. ... Employer/Party II

Workmen/Party I - Represented by Shri Vinoo Sawant.

Employer/Party II - Represented by Shri P. J. Kamat.

Panaji, dated: 17-8-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 22-4-99 bearing No. IRM/CON/ /(45)/98/2233 referred the following dispute for adjudication of this Tribunal.

> "Whether the following Charter of Demands served by Crompton Greaves Limited Employees Union vide their letter dated 22-5-1998 on behalf of the workmen employed by M/s. Crompton Greaves Motors, a business unit of M/s. Crompton Greaves Ltd., at Karaswada, Bardez, Goa, is legal and justified?"

DEMANDS

DEMAND No. 1: *Rise in Basic Wages:* Our present basic wages are extremely low. They are not at all consistent with the skills displayed by the workmen in producing the goods. The work that workmen carry out is highly skilled work and the basic wages of workmen must be raised in such a way so as to justify the skills required in performing the jobs.

The union, therefore, demands that the basic wages of all the workers should be raised by Rs. 500/- per month.

DEMAND No. 2: *Rise in Fixed Dearness Allowances:* The present fixed dearness allowance which the workers are getting is the bare minimum compared to the ever increasing inflation. While the basic wages are dependent on the skills required to perform a job, fixed dearness allowance depends upon the rise in prices of essential goods needed to keep the body and soul together. The present fixed dearness allowance is not able to do justice to the aspiration of the workmen. It should, therefore, be raised by Rs. 800/- per month, so that justice could be done.

DEMAND No. 3: *Rise in Variable Dearness Allowance:* As the consumer price index is ever increasing in India, especially in Goa, where the living standard is the highest in India, the variable dearness allowance assumes special signification. If, the rate at which the variable dearness allowance is calculated is sufficiently decent, then the variable dearness allowance will increase so as to compensate for the rise in prices of essential goods, and therefore, we were aspiring for a decent variable dearness allowance rate.

Keeping this in mind, all the workers should be granted a rise of Rs. 300/- per month in their variable dearness allowance, and the rate of variable dearness allowance should be Rs. 3/- per point rise or fall.

DEMAND No. 4: *Rise in House Rent Allowance:* House accommodation or house construction or repairs in Goa has become the cost list with the land prices rising by leaps and bounds. Workmen have to pay more on rents and are also required to pay more on house repairs. A large part of the wages of workmen are spent on their house accommodation/building house/repairs/ /construction.

The house rent of all the workmen should, therefore, be raised by Rs. 400/- per month.

DEMAND No. 5: *Rise in Conveyance Allowance:* Transport fares and petrol prices are revised upward in Goa almost every year and the present transport fares and petrol prices are indeed exhorbitant. All the workmen should, therefor, get conveyance allowance consistent with the rise in transport fares and petrol prices. Their conveyance allowance should be raised by Rs. 400/- per month.

DEMAND No. 6: *Rise in Education Allowance:* Education expenses are on the rise and considering the same, the present meagre allowance paid for education is really negligible. It should be raised at least at Rs. 300/- per month.

DEMAND No. 7: *Rise in Special Allowance:* All the workers should be given a rise of Rs. 300/- in their special allowance.

DEMAND No. 8: *Rise in Washing Allowance:* All the workers should be granted a rise of Rs. 200/- per month, in their washing allowance.

DEMAND No. 9: *Bonus under Payment of Bonus Act:* 20% Bonus should be paid to all the workers, irrespective of the nature and status of their service or jobs.

DEMAND No. 10: *Payscales and Grades:* All the workers should be granted proper and suitable payscales and grades keeping in view the modern service conditions.

DEMAND No. 11: *Privilege Leave:* Privilege leave should be increased from 17 days to 25 days excluding Sundays, public and festival Holidays.

DEMAND No. 12: *Sick Leave:* Minimum 7 days of sick leave should be granted, as sickness on account of industrial hazards is on the rise.

DEMAND No. 15: The present Leave Travel Allowance of Rs. 1500/- per year, per worker, should be increased to Rs. 5000/- per month per employee, as Travel fares and accommodation have increased manifold during the last 3 years. The increase is sought in order to compensate the tremendous rise as indicated above.

DEMAND No. 16: *Loans for Workers:* Permanent workers should be granted loans of Rs. 25000/- per worker without interest and suitable instalments should be deducted from their salaries, say Rs. 500/- per month, towards repayment.

DEMAND No. 17: *Transfer of Workers:* Transfer of workers from one factory to another factory should not be made under any conditions.

DEMAND No. 18: *Emergency/Power Failure:* In situation of emergency or power failure, the Company should bear the consequent losses. The Company should not force the workers to work on Sundays or Holidays or off days or on leave days.

DEMAND No. 19: *Overtime:* Overtime, if instructed to do, should be paid double the days wages calculated and based upon the basic wages, FDA, VDA and all the allowances. If, overtime is done on a Sunday or a paid holidays, one day off should be given, in addition to what has been stated above.

DEMAND No. 20: *Period of Settlement*: should be three years effectively from the date you receive this Charter of demands.

DEMAND No. 21: *Caveat:* The union reserves the right to delete, add or amend any demand at the time or during the negotiations on the Charter of demands.

Demand No. 22: The union calls upon you to start with it negotiations on the Charter of Demands within fifteen days in the interest of justice and fair play and peace and good industrial relations.

(2) If not, what relief the workmen are entitled?"

2. On receipt of the reference a case was registered under No. IT/48/99 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workmen/Party I (for short, "Union") filed his statement of claim at Exb. 4. The union stated that the Employer/Party II (for short, "Employer") manufacturers which produces/ /assembles, electronic motors of various phases which are useful for driving machines and the demand for the said motor is excellent in the local market as well as abroad. The union stated that by charter of demands dated 22-5-1998, it was submitted that the workmen should be paid wages consistent with rise in the prices of the essential commodities. The employer initially agreed to discuss and settle the charter of demands with the workers but subsequently refused to do so, which amounted to unfair labour practice and malafies on the part of the employer. The union stated that the demands raised by it by letter dated 22-5-1998 are legal and justified and the employer has the capacity to grant the demand raised by the workmen.

3. The employer filed written statement at Exb. 6 denying the claim of the union. The employer stated that the reference is not maintainable as the union namely Crompton Greaves Limited Employees Union is not recognized union in its establishment and none of the workmen working with the employer are the members of the said union. The employer stated that they were ready to give revision in wages to the workmen but the union's demands were so high as a result of which the union did not agree to accept the revision in wages offered by the employer. The employer stated that the charter of demands was taken in

conciliation before the Dy. Labour Commissioner, Panaji, but, on account of the stringent attitude of the workers no settlement could be arrived at. The employer denied that they have the capacity to meet the demands of the union. The employer stated that the wages paid to the workmen are in consonance with the rise in prices taking into consideration the financial position of the company and the region in which the factory is operating. The employer denied that the demands raised by the union on behalf of the workmen are legal and justified. The employer stated that the workmen are not entitled to any relief. The union thereafter filed rejoinder at Exb. 10.

4. On the pleadings of the parties issues were framed at Exb. 11. Thereafter the case was fixed for recording the evidence of the union. Several opportunities were given to the union to lead evidence in the matter but, adjournment was sort on one ground or the other. Ultimately last opportunity was given to the union to lead evidence on 7-6-2004. On this date again adjournment was sought by the union to lead evidence and accordingly the case was adjourned to 8-6-2004. On this date the union filed affidavit in evidence of one Shri Vinod Barde and the case was thereafter fixed for recording further chief of the said witness as it was submitted on behalf of the union that certain documents are to be produced through the said witness. The case was adjourned to 13-7-2004 for recording the further examination in chief of the witness Shri Vinod Barde and thereafter his cross examination. However, on this date none appeared on behalf of the union. The witness Shri Vinod Barde was also absent. Since the earlier roznamas showed that the union was not diligent enough to pursue with the mater and had been seeking adjournment on some ground or the other and no one had appeared on behalf of the union on 13-7-2004 and the witness was also absent, it was evident that the union was not interested in pursuing further with the matter. In the circumstance, the evidence of the union was closed. Adv. Shri P.J. Kamat, representing the employer submitted that he does not want to lead any evidence on behalf of the employer as the burden was on the union to prove that the demands raised by it are legal and justified. He submitted that no evidence has been produced by the union in support of the demands raised by it and therefore, the reference cannot be answered in favour of the union.

5. The reference of the dispute was made by the Government at instance of the union since according to the union the demands raised by letter dated 22-5-98 against the employer were legal and justified and even then the employer did not settle the said demands. Thus it is the union who raised the Industrial dispute and the same was referred to this Tribunal by the Government for adjudication. The Bombay High Court, Panaji Bench in the case of V.N.S. Engg., Services V/s Industrial Tribunal, the Goa, Daman and Diu and another reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case V.K. Raj Industries V/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

6. In the present case the union had contended that the demands raised by it on behalf of the workmen vide letter dated 22-5-98 are legal and justified. The reference of the dispute was made by the Government at the instance of the union. The burden was on the union to prove that the demands raised by it against the employer are legal and justified. As mentioned earlier, the union was given several opportunities to lead evidence in support of its contention that the demands raised by it are legal and justified. After several opportunities were given, the union filed the affidavit in evidence of one Shri Vinod Barde. He could not be cross-examined because he remained absent after the filing of his affidavit in evidence. The evidence of the union was closed on 13-7-04 as none was present on behalf of the union on the said date. The evidence of the union was closed because from the records it was evident that the union was not interested in pursuing further with the matter. Therefore there is no material before me to hold that the demands raised by the union against the employer vide letter dated 22-5-98 are legal and justified. I therefore hold that the union has failed to prove that the demands raised by it against the employer are legal and justified and therefore the reference cannot be answered in favour of the union/workmen. It has to be held that the demands raised by the union are not legal and justified.

In the circumstance, I pass the following order.

ORDER

It is hereby held that the charter of demands served by Crompton Greaves Employees Union vide their letter

dated 22-5-98 on the behalf of the workmen employed by M/s Crompton Greaves Motors, the business unit of M/s Crompton Greaves Ltd., at Karaswada, Bardez, Goa, is not legal and justified. It is hereby further held that the workmen are not entitled to any relief.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 1-9-2004 in reference No. IT/3/2002 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 9th September, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/3/2002

Shri Jose Gomes,
House No. 422/3,
Verem, Mansher,
Pilerne, Bardez-Goa. ... Workman/Party I

V/s

M/s. Hotel Samrat,
Dr. Dada Vaidhya
Road, Panaji-Goa. ... Employer/Party II

Workman/Party I - Represented by Adv. V. S. Goltekar.

Employer/Party II - Ex-Parte.

Panaji, dated: 1-9-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 24-1-2002 bearing No. 28/15/2001--LAB referred the following dispute for adjudication of this Tribunal.

1. Whether Shri Jose Gomes, Purchase/Operation Executive, could be construed as "workman" as defined under Industrial Disputes Act, 1947 (Central Act 14 of 1947).

2. If the answer to (1) above is in affirmative, then, whether the action of the management of M/s. Hotel Samrat, Panaji, Goa in terminating the services of Shri Jose Gomes, Purchase/Operation Executive, with effect from 1-7-2000, is legal and justified.

3. If the answer to (2) above is in negative, then to what relief the said workman is entitled ?

2. On receipt of the reference a case was registered under No. IT/3/2002 and notice was issued to the Parties. In pursuance to the said notice, the Workman/Party I (for short, "Workman") put in his appearance and subsequently filed his statement of claim at Exb. 4. The notice which was issued to the Employer/Party II (for short, "employer") was refused to be accepted by the receptionist when it was hand delivered by the bailiff of this court. Therefore the notice was sent by registered A/D Post requiring the employer to appear before this Tribunal on 11-3-2002. The said notice was received by the employer but none appeared on behalf of the employer. Opportunities were given to the employer to participate in the proceedings and file the written statement, but the employer neither appeared nor filed the written statement. In the circumstances the case was proceeded ex-parte against the employer on 14-8-2002 and subsequently ex-parte evidence of the workman was recorded.

3. The facts of the case in brief as pleaded by the workman are that by letter dated 1-11-97 he was appointed as a purchase Executive on consolidated salary of Rs. 3200/- p.m., house rent allowance of Rs. 200/- and conveyance allowance of Rs. 100/-. That by letter dated 1-11-98 he was confirmed as Operation Executive with effect from 1-12-98 and his salary was enhanced to Rs. 3700/- p.m. That by letter dated 30-6-2000 the employer informed him that his services were no more required from 1-7-2000. That the services of the workman were terminated by the employer without assigning any reasons, without giving any notice, and without payment of salary from January, 2000 to June, 2000 and other terminal dues. That the conciliation proceedings held by the Labour Commissioner/Conciliation Officer ended in failure and hence the dispute was referred by the Government to this Tribunal for adjudication. The workman contended that he is a workman in view of the nature of the duties performed by him and his services were terminated without following the mandatory provisions. The workman contended that termination of his service by the employer is illegal and unjustified and as such he is entitled to reinstatement in service with full back wages.

4. As mentioned earlier the case has proceeded ex-parte against the employer. There is no challenge to

the pleadings made by the workman in the claim statement. In the circumstances mentioned above the ex-parte evidence of the workman was recorded. The workman filed his Affidavit-in-Evidence and also produced documents in support of his contentions. The first issue for determination of this Tribunal is whether the workman Shri Jose Gomes is a workman as defined under sec. 2(s) of the Industrial Disputes Act, 1947. This is so because the order of reference itself mentions whether Shri Jose Gomes is a workman as defined under the Industrial Disputes Act, 1947.

5. Sec. 2(s) of the Industrial Disputes Act, 1947 defines "Workman" as follows:-

> "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, where the terms of employment be express or implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, include any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-
>
> (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950 or the Navy Act, 1957; or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison, or
>
> (iii) who is employed mainly in a managerial or administrative capacity, or
>
> (iv) who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

6. The Supreme Court in the case of Anand Bazar Patrika (P) Ltd., V/s workmen reported in 1950-83 SCLJ Vol. 6 page 607 and in the case of Burmah Shell Oil Storage to Distribution Co. V/s Burmah Shell management Staff Association reported in 1950-83 SCLJ Vol. 6 page 545 has held that to decide whether a person is a workman or not, what is required to be seen is the main work carried out by that person and not the incidental work done by him. The Bombay High Court in the case of S.A. Sarang V/s S.W. G. Forge and Allied Industries Ltd., reported in 1995 I CLR 837 was held that it is a settled Law that it is the actual work done by the employee which is determinitive of whether he falls within the scope of the definition of "Workman" under sec. 2(s) of the Act and not his designation. Therefore to find out whether Shri Jose Gomes is a workman or not what is required to be considered is the principal or main duties performed by him irrespective of his designation.

7. The workman has filed his affidavit-in-Evidence. He has produced the documents in support of his case. The workman has produced his letter of appointment dated 1-11-1997 at Exb. W-1. As per this letter the workman was appointed as Purchase Executive. In the said letter the terms and condition of service are mentioned. He has also produced the letter of confirmation dated 1-11-98 confirming his service as Operation Executive with effect from 1st December, 1998. As per the said letter the monthly salary was revised but the other terms and conditions of service contained in the letter of appointment dated 1-11-97 remained the same. The workman has stated in his evidence that as an Operation Executive/Purchase Executive his duties were mainly restricted to purchase of food items and other items for hotel and its kitchen and he was keeping the purchase records. He has stated that he has never performed supervisory duty nor the duties of executive nature such as sanctioning of leave of other employees, recruitment, initiating disciplinary action etc. The above statements of the workman have gone unchallenged. Besides, as per the terms and conditions of service incorporated in the appointment letter dated 1-11-97 Exb. W-1 which terms and conditions continued to apply to the workman after his confirmation as Operation Executive he was covered under the provisions of Provident Fund Act and E.S.I. Act and he was entitled to Bonus. The above evidence clearly shows that the duties which were being performed by the workman were that of clerical nature. His case did not fall in any of the exceptions contained in the definition of "Workman". I therefore hold that Shri Jose Gomes is a "Workman" within the meaning of sec. 2(s) of the Industrial Disputes Act, 1947.

8. The contention of the workman is that termination of his service by the employer is illegal and unjustified. His contention is that at the time of termination of his service he was not given one month's wages in lieu of notice nor he was paid any retrenchment compensation. The question is whether termination of service of the workman amounts to "Retrenchment". Sec. 2(oo) of the Industrial Disputes Act, 1947 defines "Retrenchment". As per the said section retrenchment means termination of service of a workman otherwise than as a punishment inflicted by way of disciplinary action. The exceptions laid down under sec. 2 (oo) of the Act, are (a) Voluntary retirement of the workman or (b) retrenchment of the workman at reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or (bb) termination of service of the workman as a result of the non-renewal of the contract between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein or (c) termination of service of a workman on the ground of continued ill-health. In the present case the workman has produced the termination letter dated 30th June, 2000 at Exb. W-3. In the said letter it is stated that the services of the workman are terminated with effect from 1st July, 2000 because his services are no more required. Therefore obviously the

services of the workman were not terminated as a matter of punishment inflicted by way of disciplinary action. The workman's case also does not fall in any of the exceptions laid down under sec. 2(oo) of the Industrial Disputes Act, 1947. The Supreme Court in the case of Santosh Gupta V/s State Bank of Patiala reported in 1980 II LLJ 72 has held that every type of termination of service of a workman except of the type specifially excepted amounts to retrenchment. I therefore hold that the termination of service of the workman amounts to retrenchment within the meaning of sec. 2(oo) of the Industrial Disputes Act, 1947.

9. In next question is whether the termination is illegal and unjustified as contended by the workman. Sec. 25 F of the Industrial Disputes Act, 1947 lays down the procedure to be followed by the employer for retrenching the services of a workman. As per the said provisions the services of the workman who is in continuous service for not less than one year cannot be retrenched unless he has been given one month's notice or paid wages in lieu of such notice and he has been paid compensation at the rate of 15 days average wages for each completed year of continuous service or any part thereof in excess of six months. The above conditions are conditions precedent to retrenchment. Sec. 25 B(2) of the Industrial Disputes Act, 1947 defines continuous service. As per the said provision a workman shall be deemed to be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer for not less than 190 days in the case of workman employed below ground in a mine and 240 days in any other case. In the present case admittedly the workman was not employed below ground in a mine. The workman in his evidence has stated that he was employed from 1st November, 1997 and his services were confirmed from 1st November, 1998. He has produced the letter of appointment at Exb. W-1 and the letter of confirmation at Exb, W-2. Both these documents support the contention of the workman that he was employed with the employer from 1st November, 1997. As per the letter dated 30th June, 2000 Exb. W-3 the services of the workman were terminated from 1st July, 2000. There is no evidence to show that the workman was given break in service at any time. It is therefore established that the workman worked with the employer for more than 240 days prior to the date of termination of his service. Therefore the provisions of Sec. 25 F of the Industrial Disputes Act, 1947 applied to the workman.

10. The workman has stated in his evidence that his services were terminated arbitrarily without giving him notice and that he was also not paid one month's wages and retrenchment compensation. There is no challenge to this statement of the workman. Even otherwise, from the letter dated 30th June, 2000 Exb. W-3 it is evident that the workman was neither given one month's notice nor he was paid wages in lieu of one month's notice nor he was paid retrenchment compensation at the time of termination of his service. This is because the termination letter is dated 30th June, 2000 and it states that the services of the workman are terminated from 1st July, 2000. Thus admittedly one month's notice was not given to the workman. Further the said letter states that one month salary in lieu of notice will be paid to the workman alongwith other dues. Thus admittedly one month salary in lieu of notice was not paid to the workman at the time of termination of his service. There is also no evidence that retrenchment compensation was paid to the workman. The payment of wages in lieu of notice and retrenchment compensation is a precondition for retrenchment. I therefore hold that the employer has failed to comply with the provisions of sec. 25 F of I. D. Act, 1947.

11. It has been held by me that the termination of the service of the workman is in violation of the provisions of sec. 25 F of the Industrial Disputes Act, 1947. The Supreme Court in the case of M/s Avon Service Production Agency Pvt. Ltd. V/s Industrial Tribunal, Hariyana and others reported in AIR 1970 SC 170 has held that giving notice and payment of compensation is a condition precedent for valid retrenchment and failure to comply with the same renders the order of termination invalid and inoperative. Same principles are laid down by the Supreme Court in the case of Gammon India Ltd., V/s Niranjan Das, reported in (1984) I SCC 509. The Supreme Court has held in this case that in the absence of compliance with the requisite Sec. 25 F, the retrenchment bringing about termination would be void-ab-initio. Since in the present case the services of the workman were terminated without complying with the provisions of sec. 25 F of the Industrial Disputes Act, 1947, in view of the law laid down by the Supreme Court in the case of M/s Avon Service Production Agency Pvt. Ltd., (Supra) and Gammon India Ltd. (Supra) the termination of service of the workman by the employer becomes illegal and unjustified. I therefore hold that the workman has succeeded in proving that the termination of his service by the employer w.e.f. 1st July, 2000 is illegal and unjustified.

12. Once it is held that the termination of service of the workman is illegal and unjustified the next question is what relief should be granted to him. The Bombay High Court in the case of Sayyed Anwar v/s Divisional Controller, MSRTC Aurangabad and others reported in 2000 (2) Bom. L.C. 388 has held that it is well settled that if an order of dismissal or termination or retrenchment is set aside as illegal, improper, the normal relief of reinstatement with full back wages must follow, unless the employer pleads and proves and brings on record cogent material to enable the labour court to depart from the aforesaid normal rule. The Supreme Court in the case of State Bank of India v/s Sundera Money reported in AIR 1976 SC 1111 after holding that the termination of service of the workman was illegal for not complying with provisions of sec. 25 F of the I. D. Act, 1947 awarded reinstatement to the workman with full back wages. The Supreme Court in para 10 of the judgment held as follows:-

"What follows? Had the State Bank of India known the law and acted on it, half month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows..."

Therefore, in view of the law laid down in the above referred cases, once the termination is held to be illegal and unjustified, the normal rule is that the workman is entitled to reinstatement in service with full back wages and continuity of service unless there are valid reasons for not granting reinstatement in service or full back wages. In the present case there is no evidence on record to prove that the past service record of the workman was not good or that he is in gainful employment from the date of termination of his service. I therefore, do not find any reason to deviate from the above normal rule. In the circumstances, I hold that the workman is entitled to reinstatement in service with full back wages and continuity of service and other consequential benefits.

I therefore pass the following order.

ORDER

It is hereby held Shri Jose Gomes, Purchase/ /Operation Executive is a "workman" as defined under sec. 2(s) of the Industrial Disputes Act, 1947. It is hereby held that the action of M/s. Hotel Samrat Panaji Goa, in terminating the services of Shri Jose Gomes, Purchase/ /Operation Executive with effect from 1-7-2000 is illegal and unjustified. The workman Shri Jose Gomes, is ordered to be reinstated in service with full back wages and continuity of service with other consequential benefits.

No order as to cost. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

Notification

No. 28/1/2004-LAB

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 30-9-2004 in reference No. IT/73/97 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Vasanti H. Parvatkar, Under Secretary (Labour).

Panaji, 19th October, 2004.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/73/97

Workman,
Rep. by Goa Trade &
Commercial Workers Union,
Velho's Building, 2nd Floor,
Panaji-Goa. ... Workmen/Party I

v/s

M/s. Christine Hoden (I) Pvt, Ltd.,
2nd Arvalle Road,
Cortalim-Goa. ... Employer/Party II

Party I/Workmen - Represented by Adv. Shri Suhas Naik.

Party II/Employer - Represented by Adv. Shri D.P. Bhise.

Panaji, dated: 30-9-2004.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 13th November, 1997 bearing No. IRM/CON/SG/(72)/92/5831 referred the following dispute for adjudication of this Tribunal.

"Whether the action of the management of M/s. Christine (India) Pvt. Limited Cortalim, in refusing to concede the following demands raised by the Goa Trade and Commercial Workers' Union, is legal and justified.

DEMAND No. 1: *Pay Scales:* It is demanded that the present pay scale applicable to workpersons should be revised on the following basis with effect from 1-7-1988.

Categories	Grade	Revised Pay-Scale
Machine Operator	A	515-40-715-50-965-60-1265 5 5 5
Asst. Machine Operator	B	465-30-615-35-790-40-990 5 5 5
Machine Helper	C	395-20-495-25-620-30-770 5 5 5
Packer	D	450-25-575-30-725-35-900 5 5 5
Packing Helpers/ /Jr. Watchman	E	387-15-462-20-562-25-687 5 5 5
General Workers	F	395-20-495-25-620-30-770 5 5 5
Watchman	G	455-25-580-30-730-35-905 5 5 5
Jr. Packing Helper/ /Jr. General Workers	H	375-15-450-20-550-25-675 5 5 5

DEMAND No. 2: *Fitment Formulae* FLAT RISE STEP I: It is demanded that each workperson should be given a flat rise of Rs. 250/- to be added to the existing basic salary as on 30-6-1988.

STEP II: The total of Flat Rise in step I plus (+) the Existing Basic as on 30-6-1988 should be fitted in the revised scale detailed in Demand No. 1. Those falling below the minimum of the pay-scale shall be fitted at the starting of the respective pay-scale and those falling in between 2 stages in the pay-scale shall be fitted at the higher stage in the Pay-scale.

DEMAND No. 3: *Seniority Increments:* It is demanded that those workmen who have served the company for a number of years should be awarded Seniority Increments on the following basis.

(a) Those completing 3 years of service as on 1-7-1988 to be awarded one Seniority Increment.

(b) Those completing 6 years of service as on 1-7-1988 to be awarded two Seniority Increments.

(c) Those completing 9 years of service as on 1-7-1988 to be awarded three Seniority Increments; and

(d) Those completing 12 years of service and above as on 1-7-1988 to be awarded four Seniority Increments.

DEMAND No. 4: *Variable Dearness Allowance (VDA)*: It is demanded for the rise or fall beyond the AAIPI265 (1960=100); Each workperson shall be entitled for VDA @ Rs. 2/- per point.

DEMAND No. 5: *Fixed dearness Allowance (FDA):* It is demanded that each work person shall be paid a fixed dearness allowance @ 50% of the basic salary, without imposing any ceiling on the F.D.A. payable per month.

DEMAND No. 6: *House Rent Allowance (HRA):* It is demanded that each person shall be paid every month a HRA @ 15% on the basic salary as well as FDA.

DEMAND No. 7: *Conveyance Allowance (CA):* It is demanded that each workperson shall be paid Rs. 80/- per month towards conveyance allowance.

DEMAND No. 8: *Incentive Allowance (IA):*

a) Incentive Allowance: Each workperson shall be paid Rs. 52/- p.m. as an Incentive allowance.

b) Productive Weightage: Whenever a team of 5 packers gives a productivity beyond 56 dozens in a shift, they shall be paid Rs. 5/- per dozen upto 60 dozens a shift, productivity beyond 60 dozens and a productivity beyond 64 dozens by the 5 packers crew, they shall be paid Rs. 10/- per dozen.

DEMAND No. 9: *Night Shift Allowance (NSA):* Each workman be paid a NSA @ Rs. 4/- per shift for 2nd & 3rd shift. Shift Allowance shall also be paid to those who work on overtime.

DEMAND No. 10: *Leave Travel Allowance (LTA):* It is demanded that each workperson should be given LTA @ Rs. 600/- per Calendar Year.

DEMAND No. 11: *Leave Facilities:*

Privilege Leave: It is demanded that each workperson shall be allowed 35 days of privilege leave per annum. This P. L. shall be allowed to be accumulated upto 100 days. The workpersons shall also have the facility to encash leave in excess of 100 days;

Casual Leave: It is demanded that each workperson shall be allowed 15 days of CL per annum; those not availing this facility of CL, shall be allowed to encashment.

Holidays: It is demanded that each workperson shall be allowed 14 days holidays, per annum.

DEMAND No. 12: *Bed Sheets, Towels:* It is demanded that each workperson shall be issued 2 bed sheets and two pairs of towels (Turkish Bath) per annum.

DEMAND No. 13: *Gift*: It is demanded that each workperson who has put in 10 years of service at the Christine Hoden (I) Pvt. Limited shall be awarded with a Godrej Cupboard.

DEMAND No. 14: *Overtime Facilities:* It is demanded that whenever the workpersons are required to work on a Sunday, Weekly-Off or a Holiday,,the management shall pay 3 times the rate of wages and allow a compensatory off within the next 3 days from the date on which the workperson worked on a day of weekly off, Sunday or a Holiday.

Accident Leave: Whenever a workperson suffer an injury in the course of employment, the management should give special leave to the person with full pay until full recovery.

DEMAND No. 15: *Short Hand Allowance:* It is demanded that whenever any of the workperson are absent and the remaining workmen are required to continue the CREW JOBS; it is demanded that a SHORT HAND ALLOWANCE be given at the following rate:

One workman Absent ...Each workman of the crew shall be paid Rs. 5/- per shift,

Two workmen absent ...Each workman of the crew shall be paid Rs. 10/- per shift,

Three workmen absent ...Each workman of the crew shall be paid Rs. 15/- per shift.

Four workmen absent ...Each workman of the crew shall be paid Rs. 15/- per shift.

If more than 4 workmen are absent, the workmen shall not be present to work on the machine and the crew members shall be paid for that shift at 100% of the normal wages.

DEMAND No. 16: *Rainwear & Rain Coat:* It is demanded that each workperson shall be issued a Raincoat or an Umbrella once a year before the onset of Monsoon.

DEMAND No. 17: *Tea & Milk:* It is demanded that the Management ought to give one litre of milk for every batch of 10 workpersons. The present system of special tea to the office staff at the cost of the workperson should be done away with.

DEMAND No. 18: *Torches & Batteries:* It is demanded that each watchman shall be issued one torch each year & adequate number of batteries.

DEMAND No. 19: *Soaps*: It is demanded that each workman shall be issued 2 soap cakes per month.

DEMAND No. 20: *Sanitiary Towels*: It is demanded that management shall issue one dozen sanitary towels to each workperson per month.

If not, to what relief the workmen are entitled?

2. On receipt of the reference a case was registered under No. IT/73/97 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman-Party I (for short, "Union") was given several opportunities to file statement of claim in support of its demands. Since inspite of the opportunities given no statement of claim was filed on behalf of the union and since the Employer/Party II (for short, "employer") submitted that they did not wish to file any written statement/claim statement, an award dated 22-4-98 was passed holding that the action of the employer refusing to concede the demands raised by the union is legal and justified and the workmen are not entitled to any relief. Thereafter the union filed an application which was registered as Misc/5/98 praying for setting aside the award dated 22-4-98 passed by this Tribunal. After hearing the parties this Tribunal passed the order dated 20-11-98 allowing the application filed by the union and set aside the award dated 22-4-98 passed in the above reference. After the award was set aside the union was given opportunity to file statement of claim in support of its case. The union accordingly filed the statement of claim at Exb. 4. The facts of the case in brief as pleaded by the union are that the employer is having a factory situated at Cortalim, Goa, and is engaged in the business of manufacturing sanitary towels. That the employer is having several units at different parts of India including the one at Hubli. That the financial position of the employer is very sound and the employer has started one more unit at a distance of about 50 meters from the factory of the employer at Cortalim and it has also started one more unit at Hubli wherein same product is manufactured. That the demands raised by the union on behalf of the workmen are legitimate and the intention of the employer in denying the said demands raised by the union is only to harass the workmen for their legitimate union activities. That the wages paid by the employer at their factory at Hubli and by M/s Pramilla Sanitary Products having factory at Cortalim are comparatively more than the wages paid to the workers by the employer even though the workers of the employer have put in number of years of service. That the employer is falsely fabricating the statement of account and has been preparing a fabricated balance sheet in order to misguide the workers and the employer has been diverting its money in other units and is presently running the said units viably and profitably. The union contended that the other factories within the Goa region manufacturing similar products pay to the workers very high salary and the other allowances paid to the workmen by the employer are very low. The union contended that the demands raised by it on behalf of the workmen of the employer are just and proper. The union pray that the award be passed holding that the action of the employer in refusing to concede to the demands raised by it is not legal and justified.

3. The employer filed written statement at Exb. 5. The employer denied that it has units at different places including one at Hubli. The employer stated that the units referred to by the union are the independent units and it has no connection with the factory of the employer which is the subject matter of the present reference. The employer denied that its financial position is sound and stated that due to the new varieties of products and extensive publicity, its products are not in circulation as they were earlier. The employer stated that on account of severe competition in the market in regard to the similar products, the employer lost business and as such is not in a position to meet the demands raised by the union on behalf of the workmen. The employer denied that the demands raised by the union are legitimate or that they are just and proper. The union thereafter filed rejoinder at Exb. 6.

4. On the pleadings of the parties, following issues were framed at Exb. 7.

1. Whether the Party I proves that the demands raised against the Employer/Party II are legal and justified ?
2. Whether the workmen are entitled to any relief ?
3. What Award ?

5. My findings on the issues are as follows:

Issue No. 1: In the negative.
Issue No. 2: In the negative
Issue No. 3: As per order below.

REASONS

6. *Issue Nos. 1 and 2:* Since the demands were raised by the union on behalf of the workmen and according to the union the said demands were legal and justified and the action of the employer in refusing to concede to the

said demands was not legal and justified the burden was cast on the union to prove that its demands are legal and justified. The Union was given several opportunities to lead evidence in support of its contention that the demands raised by it on behalf of the workmen are legal and justified. Inspite of the several opportunities given, no evidence came to be led on behalf of the union and ultimately the evidence of the union was closed on 7-5-2004. The employer submitted that since the union has failed to lead any evidence in the matter, the employer also does not wish to lead any evidence. In the circumstances, there is no evidence before this Tribunal either on behalf of the union or on behalf of the employer.

7. The reference of the dispute was made by the Government at the instance of the union since the demands were raised on behalf of the workmen. Thus, it is the Union who raised the industrial dispute and the same was referred to this Tribunal by the Government for adjudication. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engg. Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the obligation to lead the evidence to establish an allegation made by a party is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court has further held that the provision of Rule 10-B of the Industrial Disputes Act which requires the party raising a dispute to file a statement of demands relating to the issues in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly indicates that the party who raises the industrial dispute is bound to prove contention raised by him and Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other party to the dispute. In another case i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court has further held that it is well settled that if a party challenges the validity of an order, the burden lies on him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

8. In the present case the dispute was raised by the union. Since it was at the instance of the union that the reference of the dispute was made by the Government, the burden was on the Union to prove that the demands raised by it were legal and justified. As mentioned earlier, the union was given several opportunities to lead evidence in support of its contention that the demands raised by it are legal and justified. Therefore there is no material before me to hold that demands raised by the union against the employer are legal and justified. I therefore hold that the union has failed to prove that the demands raised by it against the employer are legal and justified. This being the case the workmen are not entitled to any relief. I therefore answer the issue Nos. 1 and 2 in the negative. Consequently, I hold that the action of the employer in refusing to concede to the demands raised by the union is legal and justified.

In the circumstance, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s. Christine Hoden (India) Pvt. Limited Cortalim, Goa, in refusing to concede the demands raised by the Goa Trade and Commercial Workers' Union, is legal and justified. It is hereby held that the workmen are not entitled to any relief.

No order as to costs. Inform the Government accordingly.

Sd/-
(Ajit J. Agni),
Presiding Officer,
Industrial Tribunal.

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